

**THE SUPREME COURT FOR THE STATE OF FLORIDA**

**CASE NO: 95,886, 00-703**

INQUIRY CONCERNING A JUDGE, NO. 99-10 AND NO. 00-17  
HONORABLE MATTHEW MCMILLAN

**MOTION TO INTERVENE AS AMICUS CURIAE FOR LIMITED  
PURPOSE OF EXPRESSING THAT THE REMOVAL OF JUDGE MATT  
MCMILLAN FROM THE BENCH WOULD ERODE THE PUBLIC'S  
CONFIDENCE IN THE JUDICIARY AND DISENFRANCHISE THE  
VOTERS OF MANATEE COUNTY**

SUBMITTED BY  
**Citizens and Registered Voters of Manatee County and the State of Florida**  
On this 16th day of February in the year of our Lord 2001

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy  
has been sent via US Mail to:

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Feb.16, 2001

**MOTION TO INTERVENE AS AMICUS CURIAE FOR LIMITED PURPOSE OF EXPRESSING THAT THE REMOVAL OF JUDGE MATT MCMILLAN FROM THE BENCH WOULD ERODE THE PUBLIC'S CONFIDENCE IN THE JUDICIARY AND DISENFRANCHISE THE VOTERS OF MANATEE COUNTY**

**Citizens and Registered Voters of Manatee County and the State of Florida** move this Honorable Court for an Order permitting appearance in this proceeding as Intervenors and as grounds therefor would assert:

1. This Motion is brought pursuant to Rule 21 FJQCT; Rule 6(j), FJQCR; Rule 2.140(b)(1), Fla.R. Jud. Admin.; Rule 9.300, Fla.R. App P.; Rule 9.370, Fla. R. App.P., and Rule 1,260, Fla.R.Civ P.
2. **Citizens and Registered Voters of Manatee County and the State of Florida** is a citizens group of registered voters in Manatee County, Florida, who are compelled to point out to the Court that there is a serious concern in regard to this proceeding in the local jurisdiction with far-reaching implications for all Florida and United States Citizens.
3. The object of this proceeding by the Florida Judicial Qualifications Commission (JQC) was to determine whether Judge McMillan should continue to hold judgeship. The JQC was to recommend to this Court whether Judge McMillan should be punished all; and if so, the degree of punishment, which includes the options of a) public reprimand; b) suspension; c) removal from office.
4. The JQC charged and convicted Judge McMillan of violating Florida rules that govern the conduct of sitting judges; yet these alleged violations occurred prior to the time Judge McMillan was a sitting judge.
5. There are cases on point that say that the conduct for which Judge McMillan has been charged and convicted are protected by the Federal and Florida Constitutions. There are portions of the Florida Judicial Canons that have been found to be unconstitutional. Therefore Judge McMillan's rights to Freedom of Speech have been violated.
6. In a Stipulation of Findings signed on January 17, 2000, the JQC previously

acknowledged and admitted that any mistakes made during Judge McMillan's campaign were made unintentionally. It was unethical and inconsistent for the JQC to then reverse their previous findings and try Judge McMillan as if their prior findings had not been made. In doing so, the prosecutors were overly vigorous and behaved in violation of the rules of the Florida Bar by prosecuting Judge McMillan for violations of which they had concluded he was not guilty.

7. Members of **Citizens and Registered Voters of Manatee County and the State of Florida** attended the trial of Judge McMillan, which was held in Manatee County, Florida, October 30th through November 2<sup>nd</sup>. In reviewing the findings of the JQC, **Citizens and Registered Voters of Manatee County and the State of Florida** is obligated to bring the bias and dubious conclusions of the JQC to the attention of this Court. The Court is urged to carefully review the record for itself rather than rely upon the findings of the Hearing Panel, for the findings of the JQC are in no way consistent with the evidence, neither the testimony nor the exhibits, that was presented at Judge McMillan's trial.
8. Unintentional mistakes by a candidate are not removable offenses. The JQC abused its power by a) ignoring overwhelming evidence presented at trial demonstrating every effort made by Judge McMillan to be factual, and b) by mere speculation, concluding that Judge McMillan's alleged campaign mistakes were done intentionally. The record reflects that the burden of "clear and convincing" evidence was not met. The JQC cannot defy the rule of law and convict Judge McMillan by speculating upon the motives and intents of his heart.
9. In reaching its findings and recommendations, the JQC disregards all mitigating circumstances, including the impact of the misconduct of Judge Brown and/or his supporters on Judge Brown's behalf. Judge McMillan presented indisputable evidence that he, his family, and even his supporters were threatened and harassed throughout the campaign. Examples include the Sheriff's business partner, Paul Sharff, telling McMillan he was sent on behalf of the judiciary to convince McMillan to drop out of the race, and that if he did not, McMillan and his wife could expect that drugs would be planted on them and they would be subject to continual character assassination through the news media; Mr. Sharff explaining that George Brown had called in favors and exerted pressure to gain the endorsement of the Sheriff and others; phone calls being made to Mrs.

McMillan's business telling her they would run her out of business; obscenities spray-painted on the McMillan's front door; a brick thrown through Mrs. McMillan's office window; tires slashed; cars egged; obscene phone placed to their to their home; etc. The threats of Mr. Sharff, who took the Fifth Amendment to every question, came to pass, with the cooperation of the news media: Two years of harassment and false accusations in the press, including the biased chief Judge Gallen calling the press and posing for a photograph in Judge McMillan's chambers simply because Judge McMillan called in sick for work one day. It is neither reasonable nor proper to ignore the impact of this environment when evaluating the conduct of and choosing the appropriate level of punishment for Judge McMillan.

10. In addition to the campaign violations, Judge McMillan has been charged and convicted of improperly setting a bond on a DUI case in which he was a witness and lacking candor in his explanation to the hearing panel. Again, the JQC speculates that Judge McMillan intended to set the bond on Mr. Ocura, with no clear and convincing evidence to support their speculation.
11. The evidence that Judge McMillan intended to assert himself in Mr. Ocura's bond hearing is not supported by the video tape played at Judge McMillan's trial! Judge McMillan is seen telling all present that he witnessed Mr. Ocura's driving, and then states clearly and properly that **he is going to pass on the case**. These are not the actions of a man who deliberately wanted to sneak into a case so that he could violate the rights of the defendant.
12. The JQC failed to recognize that Judge McMillan only set Mr. Ocura's bond after the prosecution informed him Mr. Ocura had four or more prior DUI convictions. At that point, Judge McMillan had to choose between his responsibility to protect the public and his responsibility to stay out of the case. His ruling was within his authority to make, as it was procedural in nature. Judge McMillan chose to protect the public by setting Mr. Ocura's bond at \$100,000 under the condition that Mr. Ocura was **brought back in front of another judge within 24 hours** so that another judge could review his decision.
13. Even if Judge McMillan made an erroneous decision involving Ocura, it was not a removable offense, but solely an appealable error.

14. Judge McMillan's decision was ultimately proven to be correct.  
Another judge lowered Mr. Ocura's bond, and he subsequently failed to show up for his trial. He remains a fugitive, putting innocent lives at risk.
15. On what evidence did the JQC decide that Judge McMillan was not "candid?"  
There was simply no clear and convincing evidence presented to indicate that Judge McMillan lied to the hearing panel. The Court cannot allow the JQC to disregard evidence and propose to judge the subjective motives and intents of Judge McMillan's heart.
16. The credibility of the hearing panel is in question. Their erroneous findings could only be explained by the fact that they are an appointed body with vested interests. They are made up mostly of sitting judges and lawyers – incumbent judges who hope no candidate will ever run a campaign challenging them, and lawyers who hope to curry favor with sitting judges. There is not even the pretense of impartiality.

**WHEREFORE** We, the **Citizens and Voters of Manatee County in the State of Florida** request this Court to grant this motion and to:

- A). Confirm our desire to choose our judges by way of a meaningful electoral process, whereby the First Amendment rights of candidates are not wrongfully stifled in the name of "maintaining public confidence in the judiciary," and so candidates will feel free to run against incumbents without fear of harassment, intimidation and character assassination.
- B). Protect and enforce the principle and spirit of the results of the recent Florida referendum where the electorate voted NO to the appointment of County and Circuit Judges and the 1998 election to the bench of Matt McMillan, so that the majority of voters of the county will not be disenfranchised.
- C). Confirm our position that the removal of the Honorable Judge Matt McMillan from office by the Florida Supreme Court would silence the voice of the voters, would undermine the voters' decision on said referendum, and would have the practical effect of rendering the outcome of the referendum meaningless.

D). Enforce our constitutional right to hold the judiciary accountable through exercising our right to elect judges who we believe will take responsibility for much needed court reform, i.e. stop the revolving door for criminals by making convicted drunk drivers and drug offenders complete rehabilitation programs, pay their fines and court costs, and make restitution to the victims.

E). Find that the Judicial Qualifications Commission, an appointed body, unaccountable to the citizens, disregarded or ignored exculpatory evidence found in the record of Judge McMillan's trial and based its findings upon circumstantial evidence, conjecture and testimony that is shown in the record to be perjurious.

F). Acknowledge that **Citizens and Voters of Manatee County and the State of Florida** have no confidence in the findings and recommendations of the Florida Judicial Qualifications Commission, and find that it has been derelict in its duty to follow the law, to fairly and impartially weigh evidence, and to reach a decision by clear and convincing evidence based upon the facts and the record regarding Judge Matt McMillan.

G). Find that the voters of Manatee County have not called for the removal of Judge McMillan, a duly elected official chosen by the citizens in an election sanctioned under the Florida Constitution.

H). Order that the Honorable Judge Matt McMillan be retained in office, or in the alternative, ask for a special referendum as to his retention.

Submitted on behalf of:

**CITIZENS AND VOTERS OF MANATEE COUNTY AND THE STATE OF FLORIDA**

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I, as one of the original signers of a petition to the Court of 1100 people, was motivated to submit this brief on behalf of the Citizens and Voters of Manatee County and the State of Florida because of a phone call I received from the Manatee Herald Tribune asking me if I wanted to still have my letter to the editor published in light of the fact that there was an article stating Judge McMillan is an alcoholic. I researched this and found out there was no such article, and certainly no basis in truth; it was simply another one of the paper's efforts to turn Judge McMillan's supporters against him and further assassinate his character, as promised would be done by Mr. Sharff if Judge McMillan ran against an incumbent judge.